



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET, Rm. 3-177
NEW YORK, NY 10007

MICHAEL A. CARDOZO
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ARTHUR G. LARKIN
Senior Counsel
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November 28, 2012

BY ECF

Hon. Viktor V. Pohorelsky
United States Magistrate Judge
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Elle Carmichael v. City of New York, et al., 06-CV-1913 (NG) (VVP)

Your Honor:

We write to request an order precluding (or in the court's discretion, conditionally precluding) plaintiff's canine "expert" Ms. Lisa Harvey from testifying or offering any opinions in this case. Plaintiff has not complied with her mandatory disclosure obligations under Rule 26, and refuses to confirm that Ms. Harvey will appear at our offices for deposition on a previously agreed-upon date, December 14, 2012. We also request that if preclusion is not ordered, the court fix reasonable travel costs for Ms. Harvey to travel to New York for the deposition (she resides in California). Plaintiff insists that Ms. Harvey should stay in New York for three days and nights at the City's expense for a deposition likely to last approximately half a day, which is unreasonable in these circumstances. Defendants' motion for summary judgment is due on or before January 15, 2013, and we are attempting to conduct all expert depositions before the motion is filed. Given the time constraints, we respectfully seek Your Honor's assistance in resolving these matters as soon as practicable.

Factual Background. This case involves claims that the City, as a matter of policy or custom, routinely discriminates against black citizens by failing to investigate missing persons complaints about blacks with the same diligence as it investigates such complaints about whites or others. Plaintiff claims that in April, 2003, she reported her daughter, Romona Moore, missing, and that the police failed to investigate her complaint because Ms. Moore is black. Tragically, she had been kidnapped and was subsequently murdered. Plaintiff's canine "expert," Ms. Harvey, a community college teacher, has opined that if the police had promptly utilized a canine, they would have found Ms. Moore and prevented her murder. In August, we noticed Ms.

Harvey's deposition, and recently the parties agreed on a firm date of Friday, December 14, 2012, for the deposition, in order to accommodate her teaching schedule.

Ms. Harvey's CV indicates that she has testified as a "courtroom" expert in six prior cases (*see Exhibit A*, page 5 of 5). Only the case names are listed; no other identifying information, such as the date, court, name of attorney who retained her, or index number, is provided. Nor are any cases identified in which Ms. Harvey may have testified as an expert at deposition. By e-mail dated August 15, 2012 (copy attached as *Exhibit B*), more than three months ago, I requested that plaintiff supply transcripts of the testimony in all six cases, or if the witness did not have copies, enough information regarding the cases (court, index number, date of testimony and attorney who retained Ms. Harvey), so that the City could obtain copies at its expense. We also requested copies of her reports in the six cases. (*Id.*) Counsel replied that he was not sure we were entitled to the information we requested but would "look into it." (*Id.*) We have heard nothing for the past three months and still do not have the information we requested, nor do we have any information about cases in which Ms. Harvey may have testified at deposition.

Plaintiff's Expert Should be Precluded. Plaintiff should be precluded from calling Ms. Harvey at trial or relying on her opinions in opposition to the City's motion for summary judgment, because plaintiff has failed to disclose information sufficient to enable the City to obtain her prior reports or testimony, and has failed to identify any cases where Ms. Harvey has testified at deposition. Alternatively, we submit that if the court does not order preclusion outright, the court should conditionally preclude Ms. Harvey's opinions unless plaintiff produces copies of all of her prior testimony in the six cases, all prior deposition transcripts and all prior reports she submitted in those cases – not just the information that would enable us to obtain our own copies, because those disclosures are now many months overdue and very little time is left before the deposition takes place, assuming preclusion is not ordered. We submit that plaintiff should be directed to produce all reports and transcripts seven (7) days before the deposition.

Rule 26(a)(2)(B) provides that expert disclosures "must contain ... a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition" Fed. R. Civ. P. 26(a)(2)(B)(v) (emphasis added). "The obvious purpose of providing lists of prior cases is to enable opposing counsel to obtain prior testimony of the expert." *Coleman v. Dydula*, 190 F.R.D. 316, 318 (W.D.N.Y. 1999); *accord, Brown v. Overhead Door Corp.*, Case No. 06 C 50107, 2008 U.S. Dist. LEXIS 34879, *5 (N.D. Ill. Apr. 29, 2008) ("defendant is entitled to explore plaintiff's experts' prior testimony in hopes of uncovering inconsistencies between the opinions they intend to express in this case and the opinions expressed in other cases," and ordering plaintiff to disclose transcripts); *see also Medina v. United Christian Evangelistic Association*, Case No. 08-22111-CV, 2009 U.S. Dist. LEXIS 113930, *5, 107 Fair Empl. Prac. Cas. (BNA) 1534 (S.D. Fla. Nov. 20, 2009) ("The purpose of the disclosure requirement [of prior testimony] is to afford the opposing party a reasonable opportunity to prepare for effective cross-examination") (internal quotes omitted).

The list should include enough information so that opposing counsel can obtain copies of the reports or testimony. "Case law establishes that the list of cases in which the witness has testified should at a minimum include the name of the court or administrative agency where the testimony occurred, the names of the parties, the case number, and whether the testimony was

given at a deposition or trial.” *Coleman*, 190 F.R.D. at 318 (citations omitted). The courts recognize that without this basic information, opposing counsel “cannot research prior testimony,” and further recognize that “Rule 26 does not contemplate shifting this burden to the discovering party.” *Id.* (citing *Majewski v. Southland Corp.*, 170 F.R.D. 25, 27 (D. Kan. 1996) (precluding expert testimony where report failed to identify prior cases with sufficient information); *Nguyen v. IBP, Inc.*, 162 F.R.D. 675, 682 (D. Kan. 1995)); *see also Cartier v. Four Star Jewelry*, 01-CV-11295 (CBM), 2003 U.S. Dist. LEXIS 16887, *4-5 (S.D.N.Y. Sept. 24, 2003) (under Rule 26, “the key [issue] is whether sufficient information is provided so that the opposing party's counsel can procure copies of the deposition or trial testimony”).

Plaintiff’s expert disclosures failed to include any information about the cases except the name of the criminal defendant, viz., all were identified only as “People v. _____,” with the defendant’s name (*see Exhibit A*, page 5 of 5). Even after we requested that plaintiff supply identifying information for the cases – more than three months ago – plaintiff’s counsel only stated he would “look into” the matter and then did nothing. The Rules “do[] not contemplate shifting th[e] burden” of finding this information to the party who will cross-examine the expert. *See Coleman*, 190 F.R.D. at 318. Plaintiff’s failure to comply with Rule 26(a) mandates preclusion “unless the failure was substantially justified or was harmless.” Fed. R. Civ. P. 37(c)(1). Case law establishes that where a plaintiff fails to disclose sufficient information concerning an expert’s prior testimony, preclusion is appropriate, especially if little time is left before the expert is expected to testify. *See, e.g., Majewski*, 175 F.R.D. at 27 (precluding expert six weeks before trial where plaintiff failed to supply complete information on case list); *Norris v. Murphy*, Civil Action # 00-12599-RBC, 2003 U.S. Dist. LEXIS 10795, *7-9 (D. Mass. Jun. 26, 2003) (granting motion to preclude expert filed twenty days before trial, holding that expert’s list of case names with no other identifying information was insufficient); *Palmer v. Rhodes Machinery, Inc.*, 187 F.R.D. 653, 656-7 (N.D. Okla. 1999) (granting preclusion in light of “impending trial date” where expert failed to disclose complete case list).

It bears emphasis that an expert’s failure to keep complete records does not constitute “substantial justification” for non-compliance. “An expert cannot deliberately put himself or herself in the position where it is impossible to comply with a rule and then claim that he or she cannot comply. Self-induced inability to comply with a rule is simply not justified.” *Norris*, at *11; *see also Nguyen*, 162 F.R.D. at 681 (“An expert’s failure to maintain records in the ordinary course of his business sufficient to allow disclosures to be made, does not constitute ‘substantial justification’ for the failure to provide required disclosures as to any retained expert expected to testify at the trial of the case”); *Fyfe v. Baker*, File No. 1:06-CV-28, 2007 U.S. Dist. LEXIS 47147, *2-3 (D. Vt. Jun. 28, 2007) (granting preclusion for failure to provide list of prior cases, holding that “experts should not be offering their services in federal court if they cannot (or will not) comply with the Federal Rules and attorneys should not be retaining such experts”).

As an alternative to preclusion, we submit that the court should direct plaintiff to incur the cost and expense of locating all of Ms. Harvey’s prior courtroom and/or deposition testimony, arranging for transcripts to be created if necessary, and produce copies of both the testimony and reports to the City, no later than Dec. 7, 2012, seven (7) days prior to the deposition date of Dec. 14, 2012, or else be precluded from relying on Ms. Harvey’s opinions in this case. While some courts have allowed parties to cure the defects in disclosure by providing the case list, or else face preclusion, *see, e.g., Nguyen*, 162 F.R.D. at 681-2, we submit that a

different remedy is warranted here. Because the City's motion for summary judgment is due in approximately six weeks (which includes the holiday season), and because the expert deposition must be completed beforehand and is scheduled for Dec. 14, 2012, plaintiff's curing the defect now would not remedy the prejudice to the City. Plaintiff's failure to comply with the rule at the time the expert disclosures were made or at any time after the City requested compliance three months ago (*see Exhibit B*), warrant an order requiring her to bear the cost and expense of producing the reports and all testimony, or else be precluded.

Reasonable Travel Expenses. If the court orders a remedy other than preclusion, Ms. Harvey's deposition should take place on Dec. 14, 2012, a firm, previously agreed-upon date. Plaintiff refuses to confirm the date, however, unless the City agrees to pay for Ms. Harvey to stay in New York for three days and nights. We submit that plaintiff's position is unreasonable.

Initially, in attempting to work out travel arrangements for the witness, we suggested that she fly overnight on Dec. 12, arrive on Dec. 13, and that we would conduct the deposition on Dec. 14, giving plaintiff's counsel one day to meet with the witness to prepare. However, plaintiff's counsel complained that the witness did not want to take the "red eye" flight to New York, so we agreed to pay for an extra night at the hotel, and to rearrange the flight so she could travel early in the day on Dec. 12, arrive in New York that evening, meet with plaintiff's counsel the next day, and then depart on Friday, Dec. 14, at 7:00 p.m., after the deposition was completed (*see Exhibit C* [travel itinerary]). Plaintiff's counsel, however, had previously insisted and continues to insist that the witness stay in New York for an additional night, at the City's expense, and fly out on Saturday, Dec. 15, rather than Friday after the deposition (*see Exhibit D*). As we have represented to plaintiff's counsel, the deposition will be completed before 4:00 p.m. (most likely earlier), well in advance of the 7:00 p.m. Friday night flight. However, counsel refuses to confirm the Dec. 14, 2012, date unless the City agrees to pay for the additional day and night in New York.

We request that, in the event the witness is not precluded, that plaintiff bear the costs of travel over and above the reasonable costs the City has agreed to pay, which amount to \$879.95, equal to air fare (\$289.95) and hotel reservations for two nights (\$295.00 per night, or \$590.00 total). Plaintiff should be required to present invoices for her expert's air fare and hotel reservations, and the City will reimburse the air fare up to a total of \$289.95, and hotel accommodations up to \$590.00. We submit that plaintiff should bear all other costs associated with the deposition except for the court reporter and the witness' customary fee, in light of her counsel's unreasonable position on this matter.

Respectfully submitted,

/s/

Arthur G. Larkin (AL 9059)
Assistant Corporation Counsel

AGL/m

Attachments

cc: All Counsel (by ECF)

EXHIBIT A

Lisa M. Harvey, Ph.D.
P.O. Box 1187
Lucerne Valley, CA 92356
760-680-6156
harveyl.92356@gmail.com

Education

2005-2007 National University, San Diego, California Master of Science in Forensic Science.

1992-1993 San Diego State University, San Diego, California, Post-Doctoral Fellowship.

1984-1992 Loma Linda University, Loma Linda, California. Ph.D. in Physiology. Research Emphasis: The Role of Hypoxic Stress on Fetal Adrenal Development

1989 Loma Linda University, Loma Linda, California. Certificate for Basic Microsurgery Technician.

1984-1986. Loma Linda University, Loma Linda, California. Master of Science in Physiology. Research Emphasis: The Role of Hypoxic Stress on Fetal Adrenal Development.

1979-1984. Point Loma College, San Diego, California. Bachelor of Art in Chemistry.

1979-1984. Point Loma College, San Diego, California, Bachelor of Art in Biology.

Work Experience

2008-present, Academic Senate Executive Team, Victor Valley College, Victorville, California. Academic Senate Vice President and Current Academic Senate President.

2007-present, Professor. Victor Valley College, Victorville, California. Department of Biology. Research emphasis: Olfactory Ability of Bloodhounds and Molecular Structure of Human Scent. Courses: Human Physiology, Human Physiology Lab, Human Anatomy, Gross Anatomy, Endocrinology.

2007-present, Project Director, Title V Math and Science Co-op Grant, Departments of Math, Chemistry and Biology, Victor Valley College, Victorville, California. Grant Emphasis: Increase Transferability of Undergraduate Students in a Hispanic Serving Institution, Mentoring of Undergraduate Students to Increase Student Retention and Student Success.

2006-present, Assessment Coordinator campus-wide, Victor Valley College, Victorville, California.

2004-present. Department Chair of Biology. Victor Valley College, Victorville, California.

2000-present. Undergraduate Research Coordinator for the Sciences. Victor Valley College, Victorville, California. This position involves tracking the progress of science students involved in undergraduate research.

2001-2009. Director of Undergraduate Research. Victor Valley College, Victorville, California. This position serviced all disciplines at the college. I developed a process for funding undergraduates to attend and present their projects at research conferences. I also created a campus poster session for undergraduate students to compete for awards.

2001-2009. Assistant Professor. Victor Valley College, Victorville, California. Department of Biology. Research emphasis: The Potential Role of Androstenedione in Intrauterine Growth Retardation. Courses: Human Anatomy, Gross Anatomy, Human Physiology, Independent Study for Research.

1997-2001. Associate Professor,. Victor Valley College, Victorville, California. Department of Biology. Courses: Human Physiology, Human Anatomy.

1993-1997 Adjunct Faculty, Victor Valley College, Victorville, California, Department of Biology.

1992-1993 Post-Doctoral Fellow, San Diego State University, San Diego, California. Research emphasis: The Effects of Androstenedione on Rat Myometrium.

Publications

Harvey LM, Harvey, SJ, Haser, A. MHC Odortype Found in Human Plasma. Being written for submission for publication to J. of Chemical Senses.

Harvey LM, Harvey, SJ, Haser, A. MHC Odortype Found in Human Urine. Submitted for publication to J. of Chemical Senses.

Harvey LM, Harvey, SJ, Crawford K. A Comparative Study on Traditional Scent Collection Verses the STU-100TM. Submitted for publication to J. of International. Forensic Sci.

Harvey LM, Harvey SJ, Hom M, Perna A, Salib J. The use of bloodhounds in determining the impact of genetics and the environment on the expression of human odortype. J Forensic Sci. 2006 Sep;51(5):1109-14.

Harvey LM, Harvey JW. Reliability of bloodhounds in criminal investigations. J Forensic Sci. 2003 Jul;48(4):811-6.

Harvey LM, Gilbert RD, Longo LD, Ducsay CA. Changes in ovine fetal adrenocortical responsiveness after long-term hypoxemia. Am J Physiol. 1993 May;264(5 Pt 1):E741-7.

Cahleen Shrier, Jeff Harvey, John Erickson, Amy Sell, Mehr Filmardirossian, Rebecca S. Gay, Cynthia N. Berry, and **Lisa M. Harvey**. The Effect of Androstenedione Treatment on Pregnant Rats. *Biology of Reproduction*, 60(1):125, Abstract# 102, 1999.

Cahleen M. McNutt Shrier, Jeffrey W. Harvey, Ame C. Sell, Mher V. Filmardirossian, John T. Erickson, Rebecca S. Gay, Cynthia N. Berry, and **Lisa M. Harvey**. Maternal and Fetal Estrogen levels After Administration of Androstenedione to Pregnant Rats. *Biology of Reproduction*, 65(1):331-2, Abstract# 574, 2001.

Lisa Harvey, Malgorzata Mlynarczyk, Kanchan M Kaushal, Lubo Zhang and Charles Ducsay. Chronic Cocaine Treatment in the Pregnant Rat Mimics the Effect of Chronic Hypoxia on Myometrial Contractility in Vitro. *Journal of the Society for Gynecologic Investigation*, 9(1):303a, abstract #733, Jan/Feb 2002.

Lisa Harvey, Malgorzata Mlynarczyk, Kanchan M Kaushal, and Charles Ducsay. Chronic Hypoxia Elevates Myometrial and Serum Interleukin Concentrations in Rats During Late Gestation. 49th Annual Meeting of the Society for Gynecologic Investigation, March 20-23, 2002, Los Angeles, CA. *Journal of the Society for Gynecologic Investigation*, 9(1):303a, abstract #732, Jan/Feb 2002.

Presentations

Lisa M Harvey and Charles A. Ducsay, Catecholamines and Circadian Uterine Activity in The Pregnant Rhesus Macaque, Society For Gynecologic Investigation, 36th Annual Meeting; San Diego, California; March 1989.

C.A. Ducsay, **L.M. Harvey**, C.M. McNutt and R.D. Gilbert. Effects of Nicardipine on Uteroplacental Blood Flow in the Rhesus Macaque. Society For Gynecologic Investigation, 36th Annual Meeting; San Diego, California; March 1989.

Cahleen M. McNutt, **Lisa M. Harvey**, Kanchan M. Kaushal, and Charles A. Ducsay, Effect of Catecholamines On In Vitro Prostaglandin (PG) Production By Amnion and Chorion From The Rhesus Macaque at 65-158 Days Gestation. Society For Gynecologic Investigation, 37th Annual Meeting, St. Louis, Missouri, March 1990.

C.A. Ducsay, S.M. Yellon, D.L. Hess, **L.M. Harvey**, and C.M. McNutt, Regulation of Myometrial And Endocrine Rhythms by Photoperiod In The Pregnant Rhesus Macaque. Society For Gynecologic Investigation, 37th Annual Meeting, St. Louis, Missouri, March 1990.

Cahleen Shrier, Jeff Harvey, John Erickson, Amy Sell, Mehr Filmardirossian, Rebecca S. Gay, Cynthia N. Berry, and **Lisa M. Harvey**. The Effect of Androstenedione Treatment on Pregnant Rats. 32nd Annual Meeting of the Society for the Study of Reproduction, July 31 - August 4, 1999, in Pullman, Washington.

Cahleen M. McNutt Shrier, Jeffrey W. Harvey, Ame C. Sell, Mher V. Filmardirossian, John T. Erickson, Rebecca S. Gay, Cynthia N. Berry, and **Lisa M. Harvey**. Maternal and Fetal Estrogen

levels After Administration of Androstenedione to Pregnant Rats. 35th Annual Meeting of the Society for the Study of Reproduction, July 28 - August 1, 2001, in Ottawa, Ontario, Canada.

Lisa M. Harvey, Malgorzata Mlynarczyk, Kanchan M Kaushal, Lubo Zhang and Charles Ducsay. Chronic Cocaine Treatment in the Pregnant Rat Mimics the Effect of Chronic Hypoxia on Myometrial Contractility in Vitro. 49th Annual Meeting of the Society for Gynecologic Investigation, March 20-23, 2002, Los Angeles, CA.

Lisa M. Haravey, Malgorzata Mlynarczyk, Kanchan M Kaushal and Charles Ducsay. Chronic Hypoxia Elevates Myometrial and Serum Interleukin Concentrations in Rats During Late Gestation. 49th Annual Meeting of the Society for Gynecologic Investigation, March 20-23, 2002, Los Angeles, CA.

My Students' Undergraduate Research Presentations

John Erickson and **Lisa M. Harvey**. Androstenedione and its Affects on Birth Weight. 21st Annual West Coast Undergraduate Research Conference in Biological Sciences, Point Loma, CA, April 1996.

Mher Filmadirossian, John Erickson, **Lisa Harvey** and Cahleen Shrier. Intrauterine Growth Retardation Induced by Androstenedione Administration to Pregnant Rats. 22nd Annual West Coast Undergraduate Research Conference in Biological Sciences, Los Angeles, CA; May 1997.

John Bartsch, Silva Salibian, **Lisa Harvey** and Cahleen Shrier. Myometrial Responsiveness to Bombesin in the Pregnant Rat. Southern California Conference on Undergraduate Research, California State University, Los Angeles, CA; Nov 1997.

John Bartsch, **Lisa Harvey** and Cahleen Shrier. Effects of Agonist and Antagonists on Bombesin Induced Contractions of the Pregnant Rat. 23rd Annual West Coast Biological Sciences Undergraduate Research Conference, San Francisco, May. 1998.

Ame Sell, **Lisa Harvey** and Cahleen Shrier. The Effects of a Pharmacological Increase in Androstenedione to Pregnant Rats on Fetal Development. 23rd Annual West Coast Undergraduate Research Conference in Biological Sciences, San Francisco, May. 1998

Jonathan Funk, Jeff Harvey, Cahleen Shrier, and **Lisa Harvey**. Ability of Bloodhounds To Follow An Individual's Scent on Mixed Trails. 24th Annual West Coast Biological Sciences Undergraduate Research Conference, Irvine, California, May 1, 1999.

Krystal Crawford and **Lisa Harvey**. Can Bloodhounds Discriminate Between the Scents of Identical Twins? – A Preliminary Study. 25th Annual West Coast Biological Sciences Undergraduate Research Conference, Point Loma, California, April 29, 2000.

Lauren Horvath, Charity Plaxton-Hennings and **Lisa Harvey**. Salivary Cortisol Levels and Immune Functioning in College Students. 30th Annual West Coast Biological Sciences Undergraduate Research Conference, Santa Clara, California, April 30, 2005.

Use of Bloodhounds for Law Enforcement Assistance

Bloodhound Training and Experience:

- Eight months of beginning training from veteran bloodhound handler-Larry Harris, Irvine PD
- Post certified 24 Hr (3 days) Urban Mantrailing School-Alameda PD
- 24 Hr (3 days) Mantrailing class put on by FBI Canine Assistance Program Leader Glenn Rimbey
- Trained five bloodhounds, *Dana, Shelby, Dakota, Tank and Sierra*
- Assisted in training and recruiting new handlers
- Ran numerous practice trails with bloodhounds over all types of terrain and weather conditions
- Ran numerous criminal trails assisting various law enforcement agencies: San Bernardino Police, San Bernardino Sheriff Department, Riverside Sheriff Department, Kern County Sheriff, Riverside Police, Rialto Police, Redlands Police, Colton Police, San Bernardino District Attorney's Office, San Bernardino Fire Department, Riverside Fire Department, Victorville Fire Department, Department of Alcohol Tobacco and Firearms, Federal Bureau of Investigation.
- Conducted numerous Bloodhound demonstrations for various schools, churches, police and fire departments
- Courtroom testimony (Expert Witness): *People vs. Michael Anthony Perez, People vs. Alexander Adame, People vs. Bachman, People vs. Lakurtis Thomas and People vs. Jackson, People vs. Espalin.*

EXHIBIT B

Larkin, Arthur

From: David Gottlieb [dgottlieb@thompsonwigdor.com]
Sent: Wednesday, August 15, 2012 2:45 PM
To: Larkin, Arthur
Subject: RE: Lisa Harvey Expert Report

OK, I'll look into it and get back to you.

David E. Gottlieb

Associate
Thompson Wigdor LLP
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From: Larkin, Arthur [mailto:ALarkin@law.nyc.gov]
Sent: Wednesday, August 15, 2012 2:43 PM
To: David Gottlieb
Subject: RE: Lisa Harvey Expert Report

If the reports concern the same, or similar, subject matter as the report in this case, they are discoverable under the general rules that concern relevance, and in appropriate cases courts will order that reports and/or testimony be disclosed. I don't have time to find the case law for you, but it is readily available.

Arthur G. Larkin, Esq.
Senior Counsel
New York City Law Dept.
100 Church Street, Room 3-177
New York, New York 10007
212-788-1599 (tel.)
212-788-9776 (fax)

From: David Gottlieb [mailto:dgottlieb@thompsonwigdor.com]
Sent: Wednesday, August 15, 2012 2:24 PM
To: Larkin, Arthur
Subject: RE: Lisa Harvey Expert Report

Arthur,

I'm not sure you are entitled to the reports requested here. I'll need to look into it. Do you have any authority for this request? As for identifying information regarding her previous testimony, I will let you know when I get the information.

11/27/2012

Thanks,

David E. Gottlieb

Associate
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From: Larkin, Arthur [mailto:ALarkin@law.nyc.gov]
Sent: Wednesday, August 15, 2012 1:08 PM
To: David Gottlieb
Subject: FW: Lisa Harvey Expert Report

Further to the message below, please also provide copies of any written reports Ms. Harvey signed or prepared in connection with each of the six cases.

Arthur G. Larkin, Esq.
Senior Counsel
New York City Law Dept.
100 Church Street, Room 3-177
New York, New York 10007
212-788-1599 (tel.)
212-788-9776 (fax)

From: Larkin, Arthur
Sent: Wednesday, August 15, 2012 1:00 PM
To: 'David Gottlieb'
Subject: RE: Lisa Harvey Expert Report

Would you please produce copies of the transcripts of Ms. Harvey's testimony in the six cases referenced in her CV.

If she does not have copies, please provide sufficient information concerning these cases (court, index number, date of testimony and attorney who retained Ms. Harvey), so that we may obtain copies at our expense.

Thanks in advance.

Arthur G. Larkin, Esq.
Senior Counsel
New York City Law Dept.
100 Church Street, Room 3-177
New York, New York 10007
212-788-1599 (tel.)

11/27/2012

212-788-9776 (fax)

From: David Gottlieb [mailto:dgottlieb@thompsonwigdor.com]
Sent: Monday, April 09, 2012 6:48 PM
To: Larkin, Arthur
Subject: Lisa Harvey Expert Report

Arthur,

Please see attached. Being sent by U.S. mail as well.

Regards,

David E. Gottlieb

Associate
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New York, NY 10003
(212) 257-6800 (Main)
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From: Lucas Rappoport
Sent: Monday, April 09, 2012 6:46 PM
To: David Gottlieb
Subject:

materials to go to Larkin

Lucas B. Rappoport

Paralegal
Thompson Wigdor LLP
85 Fifth Avenue
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11/27/2012

EXHIBIT C

Larkin, Arthur

From: David Gottlieb [dgottlieb@thompsonwigdor.com]
Sent: Tuesday, November 27, 2012 12:49 PM
To: Larkin, Arthur
Subject: RE: Revised flight for Ms. Harvey

As I said, particularly considering we don't know how long her deposition will last and when it will end, I think it's a reasonable request to book a flight for the following day.

David E. Gottlieb

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Thompson Wigdor LLP
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From: Larkin, Arthur [mailto:ALarkin@law.nyc.gov]
Sent: Tuesday, November 27, 2012 12:36 PM
To: David Gottlieb
Subject: FW: Revised flight for Ms. Harvey

```
jQuery(document).ready(function() { svt.logInWithFacebook.init();  
$('.hiddenWhileLoading').removeClass("hiddenWhileLoading"); });
```

As I stated yesterday, we've looked into an earlier flight on the 12th for Ms. Harvey - let me know if she will agree to the arrangement below. If not I will have to seek the court's assistance.

Arthur G. Larkin, Esq.
Senior Counsel
New York City Law Dept.
100 Church Street, Room 3-177
New York, New York 10007
212-788-1599 (tel.)
212-788-9776 (fax)

From: Dodson, Cassandra
Sent: Tuesday, November 27, 2012 11:54 AM
To: Larkin, Arthur
Cc: Dodson, Cassandra
Subject: Revised flight for Ms. Harvey

Please let me know if these flights will work. Thanks.

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12 DEC 2012 ▶ 14 DEC 2012TRIP TO **NEW YORK JFK, NY**PREPARED FOR
HARVEY/LISA MARIEEURO LLOYD TRAVEL GROUP
LUFTHANSA CITY CENTER
1-212-629-5470
NYC@EUROLLOYD.COM

RESERVATION CODE EEQUCB

AIRLINE RESERVATION CODE GRPHOK (DL)

Travel Arranger Priority Comments

E TICKET CONFIRMATION NUMBER IS -

FINAL FARE ACCEPTED FOR THIS TICKET IS **

PLUS SERVICE FEE OF 10.35

AS PER YOUR CONVERSATION WITH THE TRAVEL COUNSELOR

THIS RESERVATION IS ON HOLD TILL YOU CALL BACK

WITH AN APPROVAL. PLEASE NOTE THE FARE MAY

NOT BE GUARANTEED.

CURRENT FARE PRICED IS **279.60**

DEPARTURE: **WEDNESDAY 12 DEC** Please verify flight times prior to departure

DELTA AIR LINES INC

LAX
LOS ANGELES, CA▶ JFK
NEW YORK JFK, NYAircraft:
BOEING 757 200
SERIES JET**DL 1352**Distance (in Miles):
2461Duration:
05hr(s) :27min(s)Departing At:
11:30amArriving At:
7:57pmStop(s):
0Terminal:
TERMINAL 5Terminal:
TERMINAL 3Passenger Name:
» HARVEY/LISA MARIESeats:
29A / ConfirmedClass:
CoachStatus:
ConfirmedMeals:
Food for PurchaseAccess Your Itinerary's Trip Details and
Critical Flight Alerts on your Smartphone....

Download TripCase

DEPARTURE: **FRIDAY 14 DEC** Please verify flight times prior to departure

DELTA AIR LINES INC

JFK
NEW YORK JFK, NY▶ LAX
LOS ANGELES, CAAircraft:
BOEING 757 200
SERIES JET**DL 0087**Distance (in Miles):
2461Duration:
06hr(s) :32min(s)Departing At:
7:00pmArriving At:
10:32pmStop(s):
0

Terminal:
TERMINAL 2Terminal:
TERMINAL 5

Passenger Name:

» HARVEY/LISA MARIE

Seats:

34F / Confirmed

Class:

Coach

Status:

Confirmed

Meals:

Food for Purchase

OTHER: MONDAY 30 SEP**OTHER**NYC
NEW YORK CITY, NY

Status:

Confirmed

Information:
THANK YOU**Notes**

EURO LLOYD AFTER HOURS PHONE IS 888-694-5665

S0*****RESERVATION ON HOLD*****

EURO LLOYD TRAVEL GROUP LUFTHANSA CITY CENTER

1-212-629-5470

NYC@EUROLLOYD.COM

```
document.write(unescape("%3Cscript src='" + (document.location.protocol == "https:" ? "https://sb" : "http://b") +
".scorecardresearch.com/beacon.js' %3E%3C/script%3E")); COMSCORE.beacon({ c1:2, c2:3005558, c3:"", c4:"", c5:"", c6:"",
c15:"" });
var gaJsHost = (("https:" == document.location.protocol) ? "https://ssl." : "http://www."); document.write(unescape("%3Cscript
src='" + gaJsHost + "google-analytics.com/ga.js' type='text/javascript'%3E%3C/script%3E"));
```

EXHIBIT D

Larkin, Arthur

From: David Gottlieb [dgottlieb@thompsonwigdor.com]
Sent: Monday, November 26, 2012 4:59 PM
To: Larkin, Arthur; Tanvir Rahman
Subject: RE: flight for Mrs. Harvey

Arthur, for all we know her deposition could last until the late afternoon which would make her have to rush to even make the flight, if she would make it at all. She shouldn't be put in that position. Remember, she will have to go back to her hotel after the deposition to get her belongings and then get to the airport (of course, the City will be responsible for her taxi fare to and from the airports as well, and we will submit invoices for that). She is not asking for an extended stay through the weekend. She's only asking for reasonably comfortable traveling plans. If you are refusing to confirm that you will pay for these items if she front the costs, and you are refusing to pay for these reasonable accommodations upfront, then I'm afraid we are at an impasse. The ball is in your court.

David E. Gottlieb

Associate
Thompson Wigdor LLP
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(212) 257-6800 (Main)
(212) 257-6845 (Fax)
dgottlieb@thompsonwigdor.com
www.thompsonwigdor.com

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From: Larkin, Arthur [mailto:ALarkin@law.nyc.gov]
Sent: Monday, November 26, 2012 4:47 PM
To: David Gottlieb; Tanvir Rahman
Subject: RE: flight for Mrs. Harvey

Leaving on Dec. 15th is not reasonable or necessary, and we won't agree to pay for the extra day, or to assume the burden of searching for flights on the 15th, as I've already made clear.

As to your other request regarding an earlier flight on the 12th, I've asked our people to look into availability & will let you know if there's anything.

Arthur G. Larkin, Esq.
Senior Counsel
New York City Law Dept.
100 Church Street, Room 3-177
New York, New York 10007
212-788-1599 (tel.)
212-788-9776 (fax)

From: David Gottlieb [mailto:dgottlieb@thompsonwigdor.com]
Sent: Monday, November 26, 2012 4:44 PM

11/28/2012

To: Larkin, Arthur; Tanvir Rahman
Subject: RE: flight for Mrs. Harvey

She also prefers to leave earlier in the day on Dec 15, not later in the day on Dec 14. I think these are all reasonable requests.

David E. Gottlieb

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www.thompsonwigdor.com

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From: David Gottlieb
Sent: Monday, November 26, 2012 4:41 PM
To: 'Larkin, Arthur'; Tanvir Rahman
Subject: RE: flight for Mrs. Harvey

Arthur,

Sorry, this flight won't work because it is a red-eye coming to the east coast – it leaves LA at 11:30pm. We need something earlier in the day.

David E. Gottlieb

Associate
Thompson Wigdor LLP
85 Fifth Avenue
New York, NY 10003
(212) 257-6800 (Main)
(212) 257-6845 (Fax)
dgottlieb@thompsonwigdor.com
www.thompsonwigdor.com

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From: Larkin, Arthur [<mailto:ALarkin@law.nyc.gov>]
Sent: Monday, November 26, 2012 2:07 PM
To: David Gottlieb; Tanvir Rahman
Subject: FW: flight for Mrs. Harvey
Importance: High

```
jQuery(document).ready(function() { svt.logInWithFacebook.init();  
$('hiddenWhileLoading').removeClass("hiddenWhileLoading"); });  
Let us know if we can purchase these tickets - thanks.
```

From: Larkin, Arthur
Sent: Friday, November 23, 2012 11:21 AM
To: David Gottlieb; 'Tanvir Rahman'
Subject: FW: flight for Mrs. Harvey
Importance: High

See below - let me know if the flights work for Ms. Harvey.

From: Dodson, Cassandra
Sent: Friday, November 23, 2012 11:20 AM
To: Larkin, Arthur
Cc: Dodson, Cassandra
Subject: flight for Mrs. Harvey
Importance: High

**Please take a look at this itinerary and let me know if it is ok to ticket as is.
Thanks.**

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12 DEC 2012 ▶ 14 DEC 2012

TRIP TO **NEW YORK JFK, NY**

PREPARED FOR
HARVEY/LISA MARIE



EURO LLOYD TRAVEL GROUP
LUFTHANSA CITY CENTER
1-212-629-5470
NYC@EUROLLOYD.COM

RESERVATION CODE FKFBPH
AIRLINE RESERVATION CODE GREC29 (DL)
Travel Arranger Priority Comments
E TICKET CONFIRMATION NUMBER IS -
FINAL FARE ACCEPTED FOR THIS TICKET IS **
PLUS SERVICE FEE OF 10.35
FARE QUOTE USD 249.60 INCL TAX
LAST DAY TO ISSUE THIS TICKET 23 NOV 2012



DEPARTURE: WEDNESDAY 12 DEC ▶ ARRIVAL: THURSDAY 13 DEC

Please verify flight times prior to departure

DELTA AIR LINES INC

LAX
LOS ANGELES, CA

▶ JFK
NEW YORK JFK, NY

Aircraft:
BOEING 757 200
SERIES JET

DL 1262

Distance (in Miles):
2461

Duration:
05hr(s) :12min(s)

Departing At:
11:30pm
(Wed, Dec 12)

Arriving At:
7:42am
(Thu, Dec 13)

Stop(s):
0

Terminal:
TERMINAL 5

Terminal:
TERMINAL 3

Passenger Name:
» HARVEY/LISA MARIE

Seats:
33A / Confirmed

Class:
Coach

Status:
Confirmed

Meals:
Refreshments for Purchase

Access Your Itinerary's Trip Details and
Critical Flight Alerts on your Smartphone....

Download TripCase



DEPARTURE: FRIDAY 14 DEC Please verify flight times prior to departure

DELTA AIR LINES INC

JFK
NEW YORK JFK, NY

► LAX
LOS ANGELES, CA

Aircraft:
BOEING 757 200
SERIES JET

DL 0087

Distance (in Miles):
2461

Duration:
06hr(s) :32min(s)

Departing At:
7:00pm

Arriving At:
10:32pm

Stop(s):
0

Terminal:
TERMINAL 2

Terminal:
TERMINAL 5

Passenger Name:
» HARVEY/LISA MARIE

Seats:
38D / Confirmed

Class:
Coach

Status:
Confirmed

Meals:
Food for Purchase

OTHER: SUNDAY 15 SEP

OTHER

NYC
NEW YORK CITY, NY

Status:
Confirmed

Information:
THANK YOU FOR CHOOSING EURO LLOYD
TRAVEL

Notes

EURO LLOYD AFTER HOURS PHONE IS 888-694-5665

EURO LLOYD TRAVEL GROUP LUFTHANSA CITY CENTER

1-212-629-5470

NYC@EUROLLOYD.COM

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document.write(unescape("%3Cscript src=\"" + (document.location.protocol == "https:" ? "https://sb" : "http://b") +
".scorecardresearch.com/beacon.js" %3E%3C/script%3E")); COMSCORE.beacon({ c1:2, c2:3005558, c3:"", c4:"", c5:"", c6:"",
c15:"" });
var gaJsHost = (("https:" == document.location.protocol) ? "https://ssl." : "http://www."); document.write(unescape("%3Cscript
src=\"" + gaJsHost + "google-analytics.com/ga.js" type='text/javascript'%3E%3C/script%3E"));
```